

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G004795

SHALENE FRAZIER, Employee	CLAIMANT
CRONE HEALTHCARE, INC., Employer	RESPONDENT
FIRSTCOMP INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED APRIL 18, 2011

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by RANDY MURPHY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 17, 2011, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 13, 2011, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to her back on May 31, 2010.
4. The claimant was earning an average weekly wage of \$314.00 which would entitle her to compensation at the rate of \$209.00 per week for total disability benefits.

The parties have agreed to stipulate that claimant began earning wages in the amount of \$120.00 per week beginning on December 3, 2010.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment.
2. Temporary total disability benefits from June 28, 2010 through a date yet to be determined.
3. Attorney fee.

At the time of the hearing the claimant withdrew as an issue her entitlement to temporary total disability benefits and substituted as an issue her entitlement to temporary partial disability benefits beginning December 3, 2010, and continuing through a date yet to be determined. Claimant also clarified that she is only requesting medical treatment with respect to her lumbar spine, not her cervical spine.

The claimant contends that as a result of her compensable injury Dr. Knox has recommended an MRI of the cervical and lumbar spine which has been controverted by the respondents. Claimant further contends she is entitled to temporary partial disability benefits from December 3, 2010 through a date yet to be determined and an attorney fee.

The respondents contend that all benefits to which claimant is owed have been paid and that claimant was released at maximum medical improvement on June 28, 2010, with no permanent impairment. Respondents contend that any problems claimant is currently experiencing are not related to her compensable injury and that the additional treatment recommended by Dr. Knox is not reasonable, necessary, or related to her compensable injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference

conducted on January 13, 2011, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant has earned wages in the amount of \$120.00 per week beginning on December 3, 2010 is also hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Knox. This includes, but is not limited to, a lumbar MRI scan, TENS unit, and back brace.

4. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary partial disability benefits beginning December 3, 2010, and continuing through a date yet to be determined. Claimant is entitled to temporary partial disability benefits at the rate of \$129.00 per week.

5. Respondent has controverted claimant's entitlement to temporary partial disability benefits.

FACTUAL BACKGROUND

_____The claimant is a 23-year-old woman who began working for respondent as a CNA in August 2009. Claimant's job duties for respondent included helping residents with various activities of daily living such as eating and clothing. In addition, claimant was also responsible for turning residents.

Claimant testified that on May 31, 2010, she was in the process of helping turn a patient when she felt a popping in her mid to low back area between her belt line and bra line. Claimant testified that she had a burning, tingling pain. Claimant reported this injury and was sent by respondent to Dr. Stinnett.

The medical records indicate that claimant was evaluated by Kelly Milburn, a nurse practitioner, in Dr. Stinnett's office on June 1, 2010. Milburn's report indicates that her examination of the claimant revealed muscle spasm. Claimant was prescribed medication

and was taken off work until June 7, 2010, at which time she was to return to work at light duty. Claimant returned to work on light duty passing out ice, juice, and snacks on all floors and also performing blood pressure checks. Claimant testified that while performing light duty she did not lift patients or perform other heavy job duties.

Claimant was evaluated by Dr. Stinnett on June 7, 2010, and was diagnosed as suffering from a back ache. Dr. Stinnett prescribed claimant medication and ordered physical therapy. Claimant was next evaluated by Dr. Stinnett on June 14, 2010, and he noted that her problem was improving but diagnosed her condition as muscle spasm. Dr. Stinnett again prescribed medication and referred claimant to Dr. Hoffman, a chiropractic physician. Claimant was evaluated by Dr. Hoffman on June 14, 2010, and diagnosed with a thoracic/lumbar sprain. Dr. Hoffman prescribed treatment in the form of hot packs, manipulations, and massage. He also indicated that claimant should receive treatment twice a week for a two-week period of time.

When claimant was evaluated by Dr. Stinnett on June 28, 2010, Dr. Stinnett noted that claimant's problem had resolved and released her to full duty. Interestingly, he also noted that claimant's severity level of pain was moderate.

Subsequent to her release by Dr. Stinnett, claimant continued to be evaluated by Dr. Stinnett for anxiety problems. Dr. Stinnett's medical reports make no mention of additional back complaints and according to claimant's testimony she did not complain to him of any additional back problems because she was informed that he would no longer treat her for her workers' compensation injury.

After her release by Dr. Stinnett to full duty she returned to her prior job which required her to lift and move patients. Claimant testified that after she returned to those job duties her back condition worsened. Claimant testified that when she informed her team leader that her back was hurting and requested to return to Stinnett she was told to "suck it up and deal with it." Claimant testified that although she continued to work she

was informed on various occasions that she was not performing her job to standard which she attributed to her back pain. Eventually, claimant was terminated by respondent, sought legal counsel, and filed for a change of physician to Dr. Knox.

After her termination by the respondent the claimant became employed at Superior Senior Care working three hours a day. Claimant's job duties include running errands, washing patient's backs, et cetera. Claimant was evaluated by Dr. Knox, neurosurgeon, on December 3, 2010 and in his report of that date, Dr. Knox released claimant to work four hours per day with restrictions of no bending or stooping. Dr. Knox also recommended an MRI scan, use of a back brace, and TENS unit.

Claimant has filed this claim contending that she is entitled to additional medical treatment for her compensable injury. Claimant indicated that she is not requesting additional medical treatment for her cervical spine as recommended by Dr. Knox, but instead is requesting only additional medical treatment associated with Dr. Knox's recommendation with regard to her lumbar spine. This includes the MRI scan, back brace, and TENS unit. Claimant is also requesting temporary partial disability benefits beginning December 3, 2010, and continuing through a date yet to be determined.

ADJUDICATION

_____ The initial issue for consideration involves claimant's contention that she is entitled to additional medical treatment for the compensable injury to her low back. An employer is required to provide an injured employee with medical treatment as may be reasonably necessary in connection with the injury received. A.C.A. §11-9-508(a). Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W. 3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Daulton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d

543 (1999).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Knox.

After her compensable injury, claimant received medical treatment primarily from Dr. Stinnett. In his report dated June 28, 2010, Dr. Stinnett stated that claimant's problem had resolved and he released claimant to full-duty work. However, I also note that in that same report Dr. Stinnett indicates that claimant's severity level is moderate. Furthermore, claimant testified that after her release by Dr. Stinnett she returned to work for the respondent performing her regular job duties. Claimant testified that in the course of performing those job duties her back condition worsened and she requested permission to return to Dr. Stinnett but was denied. Claimant testified that she was eventually terminated by respondent because she was unable to perform her job because of back pain.

Claimant filed for and received a change of physician to Dr. Luke Knox, neurosurgeon. As previously noted, Dr. Knox recommended additional medical treatment in the form of a lumbar MRI scan, the use of a low back brace, and the use of a TENS unit.

Dr. Knox testified at his deposition that in his opinion this recommended treatment was reasonable and necessary for her compensable low back injury.

Q. Just so I am sure, as we sit here today, you have recommended a lumbar MRI, a TENS unit, and a back brace. Do you feel that that is reasonable treatment for Ms. Frazier as she is continuing to have low-back pain after six months after this injury?

A. Absolutely, yes.

Q. And you think that treatment is necessary?

A. Yes.

Q. After she obtains the lumbar MRI if it's awarded by the court, would you ever want to see that and send her back to go over whatever treatment plan, if any, is necessary?

A. Yes.

I find that the opinion of Dr. Knox is credible and entitled to great weight. Although claimant had previously been released by Dr. Stinnett, Dr. Stinnett is a general practitioner while Dr. Knox is a neurosurgeon. Furthermore, I note that at the time of Dr. Stinnett's release, he noted that claimant's severity level was moderate and after that release claimant testified that she returned to work for respondent at her regular duties and she had additional problems but was not allowed to return to Dr. Stinnett or any other physician for those back complaints until she obtained a change of physician order to Dr. Knox. Accordingly, I find based upon the opinion of Dr. Knox that claimant is entitled to additional medical treatment for her compensable low back injury. This includes but is not limited to his recommended lumbar MRI scan, a back brace, and a TENS unit.

With respect to this issue, I note that at the time of Dr. Knox's deposition, Dr. Knox was asked various questions with regard to objective findings versus subjective complaints during the course of his examination of the claimant. While Dr. Knox admitted that his opinion was based primarily upon subjective complaints, a claimant does not have to support a continued need for medical treatment with objective findings. *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 956 S.W. 2d 196 (1997); *Greer v. Ozark Opportunities*, 2009 AWCC 124. While objective findings are required to establish a compensable injury and to establish permanent impairment, they are not required to establish the need for continued medical treatment. As previously noted, I find based upon the credible evidence presented in this case, specifically, the opinion of Dr. Knox, that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment.

The second issue for consideration involves claimant's contention that she is entitled to temporary partial disability benefits beginning December 3, 2010, and continuing through a date yet to be determined. The parties have stipulated that as of that date the claimant began earning wages in the amount of \$120.00 per week.

In order to be entitled to temporary partial disability benefits, claimant has the burden of proving by a preponderance of the evidence that she remains within her healing period and that she suffers a partial incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W. 2d 392 (1981).

Here, Dr. Knox in his report of December 3, 2010, indicated that claimant was restricted to working only four hours per day with limitations of no lifting, bending, or stooping.

At the time of his deposition, Dr. Knox acknowledged that claimant informed him on the date of his examination that she was only working four hours per day and that he based his release for claimant to return to work in part upon claimant's statement to him that she could not work full time. Nevertheless, Dr. Knox testified at his deposition that he believed those restrictions were reasonable and necessary.

Q. At this time, pending the results of the lumbar MRI, do you feel like your current restrictions are reasonable and necessary considering the evidence in this record?

A. Yes.

Again, I find that the opinion of Dr. Knox is credible and entitled to great weight. The fact that Dr. Knox's opinion is based primarily upon subjective complaints made to him by the claimant is not dispositive because again a claimant is not required to offer objective evidence that her healing period continues for purposes of temporary disability benefits. *Chamber Door Industries, Inc. v. Graham, supra*. Accordingly, I find that the opinion of Dr. Knox is credible and entitled to great weight and based upon his opinion,

I find that claimant has met her burden of proving by a preponderance of the evidence that she remains within her healing period and that she suffers a partial incapacity to earn wages as of December 3, 2010. Therefore, claimant is entitled to temporary partial disability benefits beginning December 3, 2010 and continuing through a date yet to be determined.

Pursuant to A.C.A. §11-9-520, a claimant entitled to temporary partial disability benefits is entitled to 66 and 2/3's of the difference between the employee's average weekly wage prior to the accident and their wage earning capacity after the injury. In this particular case, claimant's average weekly wage was \$314.00. Her wage earning capacity after the injury equals the stipulated amount of \$120.00. The difference between those two figures equals \$194.00 per week. Claimant is entitled to 66 and 2/3's percent of that difference which would equal \$129.00 per week.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable low back injury. This includes but is not limited to medical treatment recommended by Dr. Knox in the form of a lumbar MRI scan, a back brace, and a TENS unit. In addition, claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary partial disability benefits beginning December 3, 2010, and continuing through a date yet to be determined. Claimant is entitled to temporary partial disability benefits at the rate of \$129.00 per week.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by

the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$325.90.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE